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HUMAN RIGHTS SUB-COMMISSION CONTINUES DEBATE ON VIOLATIONS

OF HUMAN RIGHTS

Takes up Question of Administration of Justice and

Human Rights

The Sub-Commission on Prevention of Discrimination and the Protection of Minorities, at an extended meeting Thursday afternoon, 18 August, heard the views of many more speakers, among them representatives of non-governmental organizations, liberation movements and observer States, on the question of the violation of human rights and fundamental freedoms.

Taking part in the debate were the representatives of the Indian Council of South America, the Palestine Liberation Organization, International Movement for Fraternal Union Among Races and Peoples, Liberation, the expert from Greece, Pax Romana, the Pan Africanist Congress of Azania, International Union of Students, the experts from the Netherlands and from China, Disabled Peoples' International, Human Rights Advocates, the experts from Yugoslavia, Togo, Costa Rica, the National Aboriginal and Islander Legal Secretariat, Sri Lanka, Syria and Egypt.

Also this evening, Kwadwo F. NYAMEKYE, Deputy Director for Human Rights, introduced the question of the administration of justice and the human rights of detainees (agenda item 9). Under this topic, it will consider the question of human rights of persons subjected to any form of detention and imprisonment; human rights and states of emergency; and individualization of prosecution and penalties, and repercussions of violations of human rights on families.

The expert from France, Louis JOINET, presented orally an analysis of questions related to administrative detention without charge or trial on the basis of the replies to the questionnaire drafted pursuant to Sub-Commission resolution 1987/24.

The expert from Argentina, Leandro DESPOUY, presented his second annual report on the question of human rights and states of emergency. He noted, in particular, that in situations of crisis, certain norms - legal principles and

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guarantees - had to apply. The first principle to recognize was that there were norms - for example, notification - envisaged to deal with an emergency situation, these situations had to be temporary, the threat imminent and not abstract, and proportionality. Certain human rights could not be suspended, even in a state of emergency. Habeas corpus was one of them.

Background on Administration of Justice and Human Rights of Detainees

In 1974, the Sub-Commission decided to review annually developments concerning the human rights of persons subjected to any form of detention or imprisonment, taking into account any reliably attested information from Governments, specialized agencies, regional intergovernmental and non-governmental organizations (NGOs) in consultative status with the Economic and Social Council, provided that such NGOs acted in good faith and that their information was not politically motivated or contrary to the principles of the Charter.

The Sub-Commission will also focus on the questions of administrative detention without charge or trial, and detention of persons who exercise the right to freedom of opinion and expression. In this regard, the Commission in 1987 requested the Sub-Commission to consider the right to freedom of expression and opinion as laid down in the International Covenant on Civil and Political Rights.

At its thirty-eighth session, the Sub-Commission requested Louis JOINET to prepare an explanatory paper suggesting to the Sub-Commission procedures by which it might carry out its responsibilities in this regard.

Also under this item will be a study on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1985/18 and Add.1-6), submitted to the thirty-eighth session by Special Rapporteur L.M. SINGHVI. The Sub-Commission decided to postpone consideration of this study, together with the comments submitted by its members, to its thirty-ninth session on a priority basis. At its fortieth session, the Sub-Commission will have before it a report by the Special Rapporteur on the draft Declaration, prepared in the light of all the comments and suggestions which he may have received in the meanwhile (E/CN.4/Sub.2/1988/20).

At its thirty-ninth session, the Sub-Commission, by resolution 1987/24 of 3 September 1987, requested Mr. Joinet to draft a questionnaire and send it to all Governments, specialized agencies, regional intergovernmental organizations, and non-governmental organizations in consultative status concerned to obtain further information and views relating to the matters dealt with in his explanatory paper; and to present to the Sub-Commission at its fortieth session further analysis of the matters dealt with in his explanatory paper on the basis, inter alia, of the answers to its questionnaire. The Sub-Commission will have before it the analysis submitted by Mr. Joinet in accordance with the above resolution (E/CN.4/Sub.2/1988/12).

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Statements in Debate

Beatriz AHIABA, observer for Indian Council of South America, described the difficult circumstances in which the indigenous peoples found themselves in a number of South American countries including Bolivia, Brazil, Colombia, and Peru. Hundreds of indigenous people had died because of repression by the police and armed forces, invasion and expropriation of their lands, extra judicial executions, enforced disappearances and torture. Apartheid also existed on her continent, with the human rights of the indigenous peoples trampled underfoot.

Nabil RAMLAWI, observer for the Palestine Liberation Organization, recalled that yesterday, 17 August, the Palestinians in the occupied territories decreed a general strike against the Israeli occupation. Also yesterday the occupying forces assassinated a nine-year old girl and fired on dozens of inhabitants of the territories. The speaker then gave details on the number of Palestinians who had been killed, arrested, deported, homes demolished, pregnant women who had aborted due to inhumane treatment, victims of torture, as well as other human rights violations since the start of the Palestinian uprising late last year. The Palestinian people were struggling against the inhumane policies of the Israeli occupation authorities. He reaffirmed its determination to continue the struggle until it achieved its goals.

Eya NCHAMA, observer for the International Movement for Fraternal Union Among Races and Peoples, declared that the racist policies and practices of the South African regime had to come to an end. The best way to combat that regime's racism was the promotion of human rights throughout the African continent. He called upon the 23 African States which had signed the two International Covenants to fully adhere to them. Zaïre, which ratified these two Covenants, nonetheless committed systematic and flagrant human rights violations throughout the country. Most African States had made themselves into monarchic republics. This new sort of monarchy brought about total contempt for the human rights of peoples. The international community had an interest in seeing that the United Nations remained alive. "We need a neutral and independent Secretariat, something set totally apart from the interests of Member States." It was necessary to protect all those individuals - whether members of the Secretariat or Special Rapporteurs of the Sub-Commission - who sought to serve the Organization.

Theo FREY, observer for Liberation, stated that he had worked in West Papua as a pilot for the Associated Mission Aviation from November 1987 until April 1988. Having witnessed so many human rights violations during his stay in West Papua, he said he was duty bound to report this to the members of the Sub-Commission. He had seen Indonesian soldiers maltreat Papuans - beating, kicking or striking them with their rifle butts. These were everyday happenings. But the violence against the West Papua people was perpetrated not just by individual soldiers, it was integral to the whole administration of West Papua. The Indonesians looked upon the Papuans as inferior beings, people without rights, whom they could treat like animals. The only way things could improve was for the land to be restored to the rightful owners, the native people of the region.

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Erica-Irene A. DAES, expert from Greece, considered that the global picture of human rights was very painful. Crimes against humanity were committed systematically by numerous Member States. Grave and systematic violations of human rights such as torture occurred in a number of States. Victims, in particular, were vulnerable groups such as indigenous peoples. Unfortunately, ethnic and religious minorities in some States were the subject of extermination. Minorities should be entitled, among other things, to internal self-determination, self-government or autonomy. She fully supported the right to self-determination of the ethnic Greek people living in southern Albania. Mrs. Daes also expressed great concern over the abuse and violation of the human rights of children, in particular those forced to participate in armed conflicts.

Luisa TEOTONIO PEREIRA, observer for Pax Romana, drew the Sub-Commission's attention to the situation in East Timor, noting, among other things, that at least one East Timorese out of 125 had been arrested, tortured or assassinated during 1985 and 1986. Despite all the promises of the occupiers, the territory was still cut off from the outside world. These facts were the result of the colonial presence foreign to East Timor. The Timorese continued to reject strongly this occupation which had succeeded through the force of arms. Resistance was still maintained at several levels, for they wanted to build peace in their country based on liberty and democracy.

Vuyisile DLOVA, observer for the Pan Africanist Congress of Azania (PAC), highlighted some of the issues PAC considered as priorities for international action in support of his people, as well as to express PAC's solidarity with the struggle of the people of Palestine, who like his own, were denied the most basic of human rights, the right to nationhood. Proposed legislation aimed at further restricting the trade union and worker strikes by banning political strikes and listing a whole range of trade union activities as unfair labour practices. In effect, this bill sought to destroy trade unions. He appealed to the Sub-Commission and members of NGOs to mount a campaign to force the racist regime to abandon the bill. The PAC also invited the Sub-Commission to take steps to try to force the authorities to cancel the forthcoming so-called elections in South Africa. He hoped the racists would seize the opportunity to release Nelson Mandela and PAC leader Zepharia Motupeng as a gesture of goodwill.

Lucio PARNADA, observer for the International Union of Students, drew attention to the situation of students suffering serious violations of their human rights. The struggle of students in Central America continued to be the focus of the opposition to the interventionist policy of the United States. Students and academics continued to be under attack in El Salvador because they demanded democratization of the country. A student leader in Guatemala was assassinated and the situation in Chile had worsened. The South Korean authorities brutally prevented students from meeting with their counterparts in North Korea. Students everywhere wished to do everything in their power to develop peace and justice throughout the world before the year 2000.

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Theo van BOVEN, expert from the Netherlands, noted that the meeting was taking place with the participation of several hundred interested observers, whether United Nations Member States or NGOs. Further, the nature of the Sub-Commission had changed considerably over the years, which was indicative of the great interest shown in its work. The acceptance by the United Nations of responsibility for certain situations as in South Africa, Namibia, Chile and the occupied Arab territories, was of considerable importance. Once it had accepted such a responsibility, the United Nations did not have the right to abandon it. Insofar as Governments had ratified human rights instruments, they had to try to abide by and implement them in good faith. There was indeed a close link between protection and promotion of human rights and the maintenance of peace and security.

Jin TIAN, expert from China, said he wanted to join those colleagues who had condemned the repressive and reactionary policies of the Israeli authorities in the occupied Arab territories. Their crimes threatened peace and stability in the entire Middle East region. Israel and its reactionary policies had long enjoyed the strong support of a major power. That accounted for the recalcitrance of Israel. All had noticed a new trend, namely an ever growing escalation of violence and cruelty by the Israeli authorities towards the Palestinians. The Sub-Commission should strengthen its condemnation of these violations and co-ordinate with other United Nations organs to bring pressure upon the Israeli authorities, to support the Palestinian Arab people, fighting for their inalienable human rights as well as to promote peace in the Middle East.

James DONALD, observer for Disabled Peoples International, stated that more than 30 war-disabled Salvadorians were in urgent need of medical evacuation. More than 70 others, whose conditions were more stable but whose permanent disabilities were serious, also needed medical evacuation. The Government of El Salvador implied that needed evacuations were occurring. Such was not the case. While last May some disabled were evacuated, 70 others with similar medical needs were denied. Since October 1987, those in opposition-controlled areas had not been allowed to leave. Furthermore, the Government had interfered with medical supplies destined for these disabled persons. He urged the Special Rapporteur for Human Rights and Disability to assist in securing the release of these disabled persons. Additionally, he asked the Sub-Commission to request that the Special Representative for El Salvador inform the General Assembly and the Commission on Human Rights, of the progress in these matters.

Sandra COLIVER, observer for Human Rights Advocates, requested the Sub-Commission to call to the attention of the Commission situations of gross violations of human rights in Sri Lanka, Guatemala and Iraq. She had planned also to discuss Pakistan under this agenda item. Because of yesterday's tragedy she instead expressed solidarity with the people of Pakistan as they entered a new era in their history. The speaker expressed deep concern over continuing violations of human rights committed by all parties to the Sri Lanka conflict. The situation in Guatemala demanded immediate attention. The continuation of serious human rights abuses called for resumption of the Sub-Commission's and Commission's attention under the resolution 1235 procedure. She urged the Sub-Commission to condemn all violations committed by Iraq, in particular the use of chemical weapons against its own civilians, and to call those violations to the Commission's attention.

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Danilo TURK, expert from Yugoslavia, referring to the statement by Professor Khalifa this morning, dealt with the question of ethnic minorities, in particular, the problem of separatism. The problem of the relationship between the integrity and sovereignty of states and the position of minorities was very old. History showed that no international system or agreement could guarantee international peace and minority rights at the same time. Overall, the fate of minorities had, in general, been unsatisfactory. The human rights framework as it existed today had proven itself to be not fully adequate to resolve problems of minority rights, he noted. The commemoration of the 40th anniversary of the Universal Declaration of Human Rights as well as of the resolution on the fate of minorities could serve as an appropriate setting to address some of these questions. A good place to begin might be exploring the concept of autonomy.

Abdou ASSOUMA, expert from Togo, observed that human rights, as everyone knew, was a field in which no State could claim to have a monopoly or to be perfect. One had to recognize the effort that African States had made, against the background of the world economic situation, in human rights, to set up schools and hospitals, to ensure the well-being of their peoples. These States had shown the political will to foster respect for human rights, regionally through the African Charter on Human Rights, and nationally. Progress in this field deserved to be recognized so as to improve the efforts undertaken and to work towards democracy. The NGOs could help States in achieving these goals. NGOs must organize their work, above all, to go to the field to see for themselves what was happening out there.

Luis VARELA, expert from Costa Rica, observed that the present question was among the most important ones on the Sub-Commission's agenda and had to be dealt with judiciously. The NGOs had provided the Sub-Commission members invaluable information on serious human rights violations in some 30 countries. He welcomed the efforts of the Secretary-General to put an end to some armed conflicts and trusted these efforts would have positive results to the benefit of all mankind. History had shown that there was an undeniable linkage between peace and human rights. The Sub-Commission should support what was being done by the Working Group on Disappearances. He appealed to all States to contribute to the fund set up to provide advisory services. He agreed that victims of human rights violations should receive adequate compensation.

Anselmo APARICIO, observer for the National Aboriginal and Islander Legal Services Secretariat, stated that he was Timorese and that this year he had felt it necessary to abandon his country and his relatives. He felt he could no longer tolerate living there, that his people were being decimated while the world remained silent. The speaker then described the treatment he and other East Timorese had to endure at the hands of the Indonesians following their 1975 invasion. Among other things, East Timorese were arrested, beaten, tortured, executed, disappeared, and their religious and political rights were abused. His experience had led him to fear reprisals. Therefore, he requested the Sub-Commission to take every step possible to protect his family and to promote respect for the human rights of his people.

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Nihal RODRIGO (Sri Lanka) said the intervention yesterday afternoon by the Minority Rights Group was somewhat confusing in that it did not clearly identify areas of responsibility for the continuation of the unfortunate developments in the country. His Government's commitment to a negotiated political settlement of the country's ethnic issues had not been diminished despite the continued violence of terrorist groups against Sri Lankan civilians of all communities, against service and government personnel and against members of the Indian Peace-keeping Force. It had in good faith taken necessary action to fulfil more than its share of responsibility under the Indo/Sri Lanka Agreement. If the Liberation Tigers gave up its violent ways, an immediate cessation of hostilities would be possible. It could then join other former militant Tamil groups in a democratic process that would be the best means of ensuring the Tamil people the fulfilment of their aspirations free of terrorist coercion and violence.

M. PHARAON, (Syria) observed that many countries still suffered under the old colonialism or the newer economic and financial colonialism. Racism seemed to be the appropriate outlet for justifying the exploitation of the peoples of the Third World. The Zionists had followed suit - they had expelled the Palestinians and replaced them with people from all over the world. There was much in common between Zionist racism and South African apartheid. All peoples had the right to self-determination and independence and a denial of that right was a challenge to international justice. The efforts of the international community thus far had failed to bear fruit because of the unlimited support given by some Western countries, led by the United States, to Israel and South Africa. He called on the international community to support the valiant struggle of the Palestinians now under way in the occupied Arab territories.

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